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## **UPDATED Policy Brief.....Campaign Finance Reform**

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What follows is a summary of how the major campaign finance reform bills address the primary areas of concern for campaign finance reform. (Feingold-McCain: S. 27, as it passed the Senate; Shays-Meehan: H.R. 2356, as it passed the House) Current law is also indicated, and key definitions critical to campaign law are described at the end of the Brief.

Feingold-McCain passed the Senate on April 2, 2001, by a vote of 59-41, with 11 Republicans (plus Senator Jeffords, who was then a Republican) voting for final passage. Shays-Meehan passed the House on February 14, 2002, by a vote of 240-189, with 41 Republicans voting for final passage.

In **red bold** are some of the most constitutionally questionable provisions of both bills, given current law and previous Supreme Court rulings.

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### **Soft Money**

#### National party committees

Current law: Soft money is allowed to be raised and spent.

McCain: **Soft money could not be solicited, received, directed, transferred, or spent by national parties or any entities directly or indirectly established, financed, maintained, or controlled by a national party or an agent acting on behalf of a national party.**

Shays: **Same as McCain**

#### State and local party committees

Current law: Soft money is allowed to be raised and spent on the state portion of mixed (federal/state) activities.

McCain: Soft money could not be spent for a "federal election activity." But would allow unlimited \$10,000-per-year donations (provided that it is matched with an equivalent amount of hard money) per state and local committee for voter registration (4 months before a federal election), get-out-the-vote, and other "generic" activities, provided that the activity does not refer to a federal candidate

Shays: Substantively the same as McCain

### Building fund

Current law: Donations to national and state party funds for buildings are exempt from hard-money restrictions.

McCain: Would make donations to national and state party funds for buildings subject to hard-money restrictions

Shays: Same as McCain

### Party support for tax-exempt groups

Current law: No restrictions on parties' abilities to support tax-exempt groups

McCain: **Party committees (and their agents) could not raise, give, or direct money to Internal Revenue Code 501(c) or 527 tax-exempt organizations (except if an organization is also a federal political committee)**

Shays: **Party committees (and their agents) could not raise, give, or direct money to Internal Revenue Code 501(c) or 527 tax-exempt organizations (except if an organization is also a federal political committee and except if a 501(c) organization makes no disbursements in connection with a federal election)**

### Federal candidates/officeholders role in soft-money fundraising

Current law: No restrictions

McCain: **Federal candidates/officeholders and affiliated agents and entities would be prohibited from raising soft money in connection with a federal election. This ban includes state/local candidates raising soft money for activity referring to a federal candidate (except if such fundraising occurs in person at a state/local fundraiser).**

Shays: **Same as McCain plus an application of the state/local candidate soft money fundraising ban to former state or local candidates**

### Federal candidates/officeholders role in tax-exempt fundraising

Current law: No restrictions

McCain: No provision

Shays: Would allow (regardless of other soft money restrictions) federal candidates and officeholders to make unrestricted general solicitations on behalf of 501(c) organizations involved in federal elections, as long as such solicitation does *not* specify how the funds will be used—unless the organization's primary purpose is "federal election activity." Would allow solicitations for 501(c) organizations specifically for federal election activities (including if such activities are the primary function of such organizations), as long as such solicitations are made from individuals only, subject to a \$20,000-per-donor limit.

## **Hard Money**

### Individual contributions to federal candidates

Current law: \$1000 per candidate, per election, not indexed for inflation

McCain: \$2000 per candidate, per election, indexed for inflation beginning in 2003

Shays: Same as McCain

Individual contributions to national party committees

Current law: \$20,000 per year to a federal account, not indexed for inflation  
McCain: \$25,000 per year to a federal account, indexed for inflation  
Shays: Same as McCain

Individual contributions to state party committees

Current law: \$5000 per year to a federal account, not indexed for inflation  
McCain: \$10,000 per year to a federal account, not indexed for inflation  
Shays: Same as McCain

Individual contributions to political action committees (PACs)

Current law: \$5000 per year, not indexed for inflation  
McCain: No provision  
Shays: No provision

Aggregate individual contributions

Current law: A total of \$25,000 per year to federal accounts (PACs, parties, and candidates combined), not indexed for inflation  
McCain: A total of \$37,500 per year to federal accounts, indexed for inflation  
Shays: A total of \$95,000 per two-year cycle, with no more than \$37,500 to all candidates and no more than \$57,500 to all PACs and parties (though no more than \$37,500 of this sub-limit can go to state and local parties and PACs)

PAC contributions to candidates

Current law: \$5000 per candidate, per election, not indexed for inflation  
McCain: No provision  
Shays: No provision

PAC contributions to national party committees

Current law: \$15,000 per year to a federal account, not indexed for inflation  
McCain: No provision  
Shays: No provision

PAC contributions to state party committees

Current law: \$5000 per year to a federal account, not indexed for inflation  
McCain: No provision  
Shays: No provision

National political party committee contributions to candidates

Current law: \$5000 per candidate, per election, not indexed for inflation. In an election year, national and senatorial party committees can give to Senate nominees \$17,500 combined, not indexed for inflation.  
McCain: \$35,000 for Senate nominees in year of election, indexed for inflation  
Shays: Same as McCain

Candidate loans to their own campaigns

Current law: No restriction on the amount of candidate loans that can be repaid using post-election contributions.

McCain: Would limit repayment of loans to \$250,000 from post-election contributions  
Shays: Same as McCain

### Wealthy candidates

Current law: Contribution limits are the same for all candidates, regardless of how much candidates spend from their personal funds. In 1976, the Supreme Court (in *Buckley v. Valeo*) struck down limits on spending from personal funds by candidates.

McCain: Would raise limits on individual and party contributions to Senate candidates whose opponents exceed a threshold of personal campaign funding (established using a complex formula).

Shays: Same as McCain for Senate elections. For House elections, once the personal spending of an opponent minus that of a candidate exceeds \$350,000, then the limit on individual hard-money contributions to the candidate would be tripled and the limit on party coordinated expenditures would be lifted.

### Independent Expenditures

(see definitions for “federal election activity” and “electioneering communication” in the “Definitions” section below)

### Disclosure

Current law: 24-hour advance notice required for independent expenditures of \$1000 or more in the 20 days prior to an election (not including the 24 hours before an election)

McCain: Would add a requirement for 48-hour advance notice of independent expenditures of \$10,000 or more in the 20 days prior to an election

Shays: Same as McCain

### Party spending

Current law: Parties may make independent expenditures in connection with the general election of a federal candidate without limits (as upheld by the Supreme Court in 1976 in *Buckley v. Valeo*)

McCain: **Would prohibit parties from making independent expenditures for a general election nominee and would prohibit independent expenditures for a candidate at *any* time if the party is going to make coordinated expenditures for the candidate**

Shays: **Would prohibit parties from making *coordinated* expenditures for a general election nominee for whom the party has already made independent expenditures AND would prohibit parties from making *independent* expenditures for a general election nominee for whom the party has already made coordinated expenditures**

### Coordination

(see definition for “coordination” in “Definitions” section below)

### Party spending

Current law: Parties may make coordinated expenditures in connection with the general

election of a federal candidate, subject to limits (as upheld by the Supreme Court in 2001 in *FEC v. Colorado Republican Federal Campaign Committee* [Colorado II]).

McCain: **Would prohibit parties from making coordinated expenditures for a general election nominee and would require parties to certify before making a coordinated expenditure for a candidate that it has not and will not make independent expenditures for that candidate**

Shays: **Would prohibit parties from making *coordinated* expenditures for a general election nominee for whom the party has already made independent expenditures AND would prohibit parties from making *independent* expenditures for a general election nominee for whom the party has already made coordinated expenditures**

#### Electioneering communication

Current law: Expenditures (to which federal campaign law apply) made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate or agents are considered contributions to the candidates

McCain: Would treat a coordinated “electioneering communication” as a contribution to and expenditure by the candidate or party

Shays: Same as McCain

#### FEC Regulations

Current regulations: “Coordinated general public political communications” are coordinated communications that include clearly identified candidates; are paid for by persons other than candidates or parties; include express or issue advocacy; are made at the request of a candidate or party; are controlled by the candidate or party (or the candidate or party has “substantial decision-making authority”); and are created, produced, distributed, or paid for by persons who engaged in “substantial discussion or negotiation” with a candidate or party.

McCain: Would repeal the FEC regulations and direct the FEC to promulgate new regulations for coordinated communications that do NOT require explicit collaboration or agreement to establish coordination and that address such issues as re-publication of campaign material, common vendors, and prior employment status

Shays: Same as McCain plus a requirement that the FEC will promulgate new regulations on coordinated communications by persons other than candidates, authorized committees, or parties

#### Issue Advocacy

(see also “Electioneering communication” in the “Definitions” section below)

#### Disclosure

Current law: Communications by non-political committees that avoid express advocacy do not have to disclose their expenditures to the FEC (with a possible exception for IRS Code 527 organizations), as maintained by the Supreme Court since 1976 (*Buckley v. Valeo*).

- McCain: **Would require detailed disclosure to the FEC of expenditures for “electioneering communications” exceeding a total of \$10,000 per year (disclosure within 24 hours of the first and each subsequent \$10,000 disbursement)**
- Shays: **Substantively similar to McCain, but Shays would explicitly mandate disclosure of production and airing costs**

#### Labor unions and corporations

- Current law: Communications by non-political committees that avoid express advocacy are generally outside the reach of FEC regulation, as upheld by the Supreme Court in *FEC v. Massachusetts Citizens for Life* in 1986.
- McCain: **Would ban the funding of “electioneering communications” with funds from union or certain corporate funds (a few exemptions for 501(c)4 and 527 organizations)**
- Shays: **Substantively the same as McCain**

### **FEC Disclosure and Enforcement**

#### State and local parties

- Current law: Disclosure to the FEC required for state/local party activity by federal accounts only. All mixed activities must be funded through federal accounts.
- McCain: Would require the disclosure to the FEC of all “federal election activity” of state and local party committees and their affiliated entities
- Shays: Would require the disclosure to the FEC of up to \$5000 worth of annual aggregate “federal election activity” of state and local party committees and their affiliated entities

#### Reports filed and posted

- Current law: All campaign reports filed electronically must be posted on the FEC website within 24 hours of receipt, and all paper reports must be available for public inspection at FEC headquarters within 48 hours of receipt
- McCain: Would require all campaign reports filed with the FEC to be posted on the Internet and available for in-person inspection within 48 hours (24 hours if filed electronically)
- Shays: Same as McCain

#### Criminal penalties

- Current law: Up to one year in prison and/or a fine equally the greater of \$25,000 or 300% of the amount involved in knowing and willful violations of federal campaign law involving contributions and/or expenditures of \$2000 or more in a year. Statute of limitations is three years for criminal violations.
- McCain: Would add to current law the possibility of 5 years in prison for knowing and willful violations involving contributions and/or expenditures of \$25,000 or more in a year. Statute of limitations would be extended to 5 years for criminal violations.
- Shays: Same as McCain

## Advertising

### Lowest unit rate

- Current law: Broadcasters must sell air time to candidates during the last 45 days of a primary and 60 days of a general election at the lowest unit rate for the same class and amount of time for the same period
- McCain: Would make TV, cable, and satellite lowest-unit-rate broadcast time non-preemptible, with rates based on a comparison to the prior 365 days and available to parties buying time on behalf of candidates. Random audits would ensure compliance.
- Shays: No provision

### Candidate appearance in ads

- Current law: No content requirements for lowest-unit-rate ads
- McCain: Would require candidates who run lowest-unit-rate ads that include direct references to opponents to include a photo or image of themselves on TV and a statement of their own approval (printed on TV and spoken by candidate on radio)
- Shays: Same as McCain

### Sponsor ID

- Current law: Public political advertisements (including express advocacy or those containing contribution solicitations) must state clearly who paid for the communications and whether a candidate authorized them or not.
- McCain: Would add a requirement for sponsor ID by political committees for any public political advertising (including “electioneering communications”). Would also mandate *detailed* minimum standards to enhance the visibility and audibility of sponsor ID statements.
- Shays: Substantively the same as McCain

## Miscellaneous

### Effective date

- McCain: 30 days after enactment, unless otherwise stated
- Shays: November 6, 2002, unless otherwise stated. Transition rules for use of soft money: Prior to January 1, 2003, parties may spend soft money raised before November 6<sup>th</sup> to retire outstanding debts and obligations in connection with elections held through November 5, 2002, so long as no soft money is used to repay hard-money debts. Beginning November 6<sup>th</sup>, national parties could not use soft money to defray costs associated with the construction or purchase of a building or facility.

### Severability

- Current law: If any provision of the Federal Election Campaign Act or its application to any person or situation is held invalid, the validity of the remainder and its applications shall be unaffected.
- McCain: If any provision of the Federal Election Campaign Act or its application to any

person or situation is held unconstitutional, the validity of the remainder and its applications shall be unaffected.

Shays: Same as McCain

#### Inaugural committees

Current law: Donations to presidential inaugural committees are not considered contributions under federal election law.

McCain: Would require disclosure to the FEC of donations over \$200 to presidential inaugural committees within 90 days of an event. Would ban foreign national donations.

Shays: Same as McCain

#### Public financing study

Current law: No provision

McCain: Would direct the General Accounting Office to study and report to Congress statistics for and effects of public financing of elections in Arizona and Maine

Shays: Same as McCain

#### Contributions by minors

Current law: Adults and minors are not treated differently

McCain: No provision

Shays: Would ban contributions to candidates and parties from individuals 17 years of age and younger.

### Definitions

#### Federal election activity

Current law: Express advocacy (i.e. explicit words or activities calling for the election or defeat of a clearly identified federal candidate) triggers federal campaign law, as established by the Supreme Court in 1976 in *Buckley v. Valeo*.

McCain: **1) Voter registration drives 4 months before a federal election, 2) voter ID, get-out-the-vote drives, and generic activity in connection with an election in which a federal candidate is on the ballot, 3) public communications that refer to a clearly identified federal candidate and promote, support, attack, or oppose the candidate (regardless of express advocacy), 4) services by a state or local party employee who spends at least a quarter of his or her paid time each month on activities in connection with a federal election**

Shays: **Same as McCain**

#### Generic campaign activity

Current law: No definition

McCain: Activity that promotes a party but not a federal or non-federal candidate

Shays: Same as McCain

#### Coordination

Current law: No specific definition of “coordination” or “coordinated activity” in U.S. Code



McCain: Would define “coordinated expenditure or other disbursement” as a payment made in concert or cooperation with, or at the request or suggestion of, or pursuant to any particular or general understanding with a candidate or party—regardless of express advocacy

Shays: No provision

Electioneering communication

Current law: Express advocacy (i.e. explicit words or activities calling for the election or defeat of a clearly identified federal candidate) triggers federal campaign law, as upheld by the Supreme Court since 1976 (*Buckley v. Valeo*).

McCain: **Campaign law would be triggered for broadcast, cable, or satellite ads that refer to a clearly identified candidate within 60 days of a general election and 30 days of a primary and that reach an audience that includes voters in that election (news events, hard-money expenditures, and independent expenditures would be exempted)**

Shays: **Same as McCain plus additional exemptions to be set by FEC regulation**

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